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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA
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9 DONALD LINAMAN,)

10 Petitioner,)

11 vs.)

12 JACK PALMER, *et al.*,)

13 Respondents.)
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3:08-cv-00364-LRH-RAM

ORDER

15 On July 8, 2008, the Court denied petitioner's motion for appointment of counsel (docket
16 #3). Now before the Court is petitioner's motion for reconsideration, filed August 5, 2008 (docket
17 #8).

18 Where a ruling has resulted in final judgment or order, a motion for reconsideration may be
19 construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure
20 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J*
21 *Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993).

22 Under Federal Rule of Civil Procedure 60(b) the court may relieve a party from a final
23 judgment or order for the following reasons:

24 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
25 discovered evidence that, with reasonable diligence, could not have
26 been discovered in time to move for a new trial under Rule 59(b); (3)
27 fraud (whether previously called intrinsic or extrinsic),
28 misrepresentation, or misconduct by an opposing party; (4) the
judgment is void; (5) the judgment has been satisfied, released, or
discharged, it is based on an earlier judgment that has been reversed or
vacated, or applying it prospectively is no longer equitable; or (6) any

1 other reason that justifies relief.

2 Motions to reconsider are generally left to the discretion of the trial court. *See Herbst v. Cook*, 260
3 F.3d 1039, 1044 (9th Cir. 2001). Rule 59(e) of the Federal Rules of Civil Procedure provides that
4 any “motion to alter or amend a judgment must be filed no later than 10 days after entry of the
5 judgment.” Furthermore, a motion under Fed. R. Civ. P. 59(e) “should not be granted, absent highly
6 unusual circumstances, unless the district court is presented with newly discovered evidence,
7 committed clear error, or if there is an intervening change in the controlling law.” *Herbst*, 260 F.3d
8 at 1044 (quoting *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999)).

9 Petitioner seeks reconsideration of this Court’s July 8, 2008 order, in which petitioner’s
10 motion for the appointment of counsel was denied (docket #8). Petitioner has not demonstrated that
11 he is entitled to reversal of this court’s decision under either rule 59(e) or 60(b). There is no
12 constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v.*
13 *Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). The
14 decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th
15 Cir. 1986); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir. 1984). Petitioner has not demonstrated
16 that he is incapable of presenting his claims in this litigation. The issues in this action do not appear
17 overly complex. The appointment of counsel is not justified in this instance. The motion for
18 reconsideration is denied.

19 **IT IS THEREFORE ORDERED** that petitioner’s motion for reconsideration (docket #8) of
20 this Court’s order denying a motion for appointment of counsel is **DENIED**.

21 Dated this 26th day of August, 2008.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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